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09/676,364	09/29/2000	John D. Roper	MSFT-0207/150500.1	2193

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EXAMINER

CAMPBELL, JOSHUA D

ART UNIT	PAPER NUMBER
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2178

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/676,364

Applicant(s)

ROPER ET AL.

Examiner

Joshua D Campbell

Art Unit

2178

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to communications: Request for Reconsideration filed on 03/02/2004.
2. Claims 1-32 are pending in this case. Claims 1, 12, and 23 are independent claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-5, 12-16, and 23-26 remain rejected under 35 U.S.C. 102(e) as being anticipated by Kurtzman, II et al. (US Patent Number 6,144,944, filed on April 22, 1998).**

4. **Regarding independent claim 1,**
  - defining for each source of display items, a candidate set of items to be displayed;

- Kurtzman, II et al. discloses a method in which a set of advertisements (items) is selected to be considered for display (column 2, lines 25-38 of Kurtzman, II et al.);
- selecting display items from a pool of all candidate sets of display items, in a manner that normalizes the probability that the items of any one candidate set will be selected in relation to the items of the other candidate sets;
  - Kurtzman, II et al. disclose a method in which engines that process the sets can channel their results through each other, in order to find the best display items contained throughout all the sets, thus normalizing the selection process by giving all sets a chance (column 2, lines 38-47 of Kurtzman, II et al.); and
- inserting up to N of the selected items in the available display slots of the Web page;
  - Kurtzman, II et al. discloses a method in which the amount of advertisements requested is provided to complete the web page (column 2, lines 25-38 of Kurtzman, II et al.).

**5. Regarding dependent claim 2,**

- periodically repeating the steps;
  - Kurtzman, II et al. discloses a method in which the process is performed on any web page request (periodically) (column 2, lines 25-38 of Kurtzman, II et al.).

**6. Regarding dependent claim 3,**

Art Unit: 2178

- defining a plurality of different levels of source participation, each source being associated with one level and each level having one or more sources associated with it;
  - Kurtzman, II et al. discloses a method in which the advertisements are divided into affinities (levels) (column 2, lines 25-38 of Kurtzman, II et al.);
- performing the steps separately for the sources at each level of participation, thereby selecting a number of display items at each level; and
  - Kurtzman, II et al. discloses a method in which engines are used to operate on each affinity separately, thus obtaining the best results at each affinity (column 2, 25-47 of Kurtzman, II et al.); and
- selecting a predefined number of display items from said selected items at each level and assigning the predefined number of display items of each level to respective display slots on the Web page in a manner that gives preference to one level of source participation relative to another;
  - Kurtzman, II et al. discloses a method in which advertisements are selected from the criteria of each affinity, and then the web page is filled in with the advertisements in order of weightings (preference) of the different affinities (column 2, 25-47 of Kurtzman, II et al.).

**7. Regarding dependent claim 4,**

- assigning display slots that otherwise would have been assigned to the display items of that level instead to the display items at the highest other level of participation having available items to fill those slots;

- Kurtzman, II et al. discloses a method in which if the highest preference affinity does not have enough items to cover the web pages needs the next highest affinity is used to cover the needs (Figure 4 of Kurtzman, II et al.).

8. **Regarding dependent claim 5,**

- filling the unfilled display slots with display items selected from sources outside of said predefined levels of source participation;
  - Kurtzman, II et al. discloses a method in which floating ads are used to fill in the display once there are no advertisements left in the predetermined affinities (column 23, lines 33-45 of Kurtzman, II et al.).

9. **Regarding independent claim 12 and dependent claims 13-16,** the claims are the medium containing instructions that correlates to the method of claims 1-5. Thus, the claims are rejected along the same rationale as claims 1-5

10. **Regarding independent claim 23 and dependent claims 24-26,** the claims incorporate substantially similar subject matter as claims 1 and 3-5. Thus, the claims are rejected along the same rationale as claims 1 and 3-5.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 6-11, 17-22, and 27-32 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtzman, II et al. (US Patent Number 6,144,944, filed on April 22, 1998) as applied to claims 1, 7, 12, 18, 23, and 28 above, and further in view of Langheinrich et al. (US Patent Number 6,654,725, filed on November 9, 1999).**

13. **Regarding dependent claim 6,**

- weighting the items in each candidate set to normalize the probability that items from any one candidate set will be selected from the pool of all candidate sets, thereby providing a normalized pool of candidate sets;
  - Kurtzman, II et al. disclose a method in which engines that process the weighted advertisement sets can channel their results through each other, in order to find the best display items contained throughout all the sets, thus normalizing the selection process by giving all sets a chance (column 2, lines 38-47 of Kurtzman, II et al.); and

- randomly selecting said items from the normalized pool of candidate sets;
  - o Kurtzman, II et al. does not disclose randomly selecting an item from the overall set. However, Langheinrich et al. discloses a method in which an advertisement is randomly selected based on assigned weightings (column 8, lines 1-18 of Langheinrich et al.). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the method of Kurtzman, II et al. with the method of Langheinrich et al. because it would have been more flexible by normalizing the selection process (bring the probability to 1.0).

**14. Regarding dependent claim 7,**

- Randomly selecting one of the candidate sets;
- selecting one item from the selected candidate set;
  - o Kurtzman, II et al. discloses a method in which an advertisement is selected from a list generated from a set (column 2, lines 38-47 of Kurtzman, II et al);
- reducing a count of the display items of the selected candidate set by one and removing that candidate set from further consideration when the count reaches zero;
  - o Kurtzman, II et al. discloses a method advertisements are selected from a set and removed from consideration by decrementing a reference counter (column 14, lines 21-end of page of Kurtzman, II et al.), and once a set



contains no items the set is removed from consideration and the next set is considered (Figure 4 of Kurtzman, II et al.); and

- repeating the steps until a desired number of display items have been selected;
  - Kurtzman, II et al. discloses a method in which the amount of advertisements requested are provided to complete the web page (column 2, lines 25-38 of Kurtzman, II et al.).
  - Kurtzman, II et al. does not disclose randomly selected a candidate set. Langheinrich et al. discloses a method a selection of advertisements is made randomly (column 8, lines 1-18 of Langheinrich et al.). Langheinrich et al. also discloses that it would increase performance to make selections by group rather than single advertisements (column 3, lines 33-36 of Langheinrich et al.). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the method of Kurtzman, II et al. with the method of Langheinrich et al. because it would have been more flexible by normalizing the selection process (bring the probability to 1.0).

**15. Regarding dependent claims 8 and 9,**

- randomly selecting one item from the selected candidate set; and
- selecting one item from the selected candidate set in accordance with a weighting of items applied to the selected candidate set;
  - Kurtzman, II et al. does not disclose randomly selecting an item from a set based on weighting. However, Langheinrich et al. discloses a method in

which an advertisement is randomly selected from a set based on assigned weightings (column 8, lines 1-18 of Langheinrich et al.). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the method of Kurtzman, II et al. with the method of Langheinrich et al. because it would have been more flexible by normalizing the selection process (bring the probability to 1.0).

**16. Regarding dependent claim 10,**

- defining, for each source of display items, a candidate set of items to be displayed, each candidate set of items having at least a first subset and a second subset, each subset having a count associated therewith of the number of display items in that subset, and wherein the steps are performed first on the first subset of display items until the count for that subset reaches zero, and then on the second subset; and
- the candidate set being removed from further consideration only after the counts of both subsets reach zero
  - Kurtzman, II et al. discloses a method in which a set is broken down into multiple affinities (subsets) (column 2, lines 25-38 of Kurtzman, II et al.). Kurtzman, II et al. discloses a method advertisements are selected from an affinity set and removed from consideration by decrementing a reference counter (column 14, lines 21-end of page of Kurtzman, II et al.), and once an affinity set contains no items the set is removed from

consideration and the next affinity set is considered (Figure 4 of Kurtzman, II et al.).

**17. Regarding dependent claim 11,**

- two or more subsets, and wherein the steps are performed, in turn, on each successive subset until the counts of all of the subsets reach zero;
  - o Kurtzman, II et al. discloses a method in which a set is broken down into multiple affinities (subsets) (column 2, lines 25-38 of Kurtzman, II et al.). Kurtzman, II et al. discloses a method advertisements are selected from an affinity set and removed from consideration by decrementing a reference counter (column 14, lines 21-end of page of Kurtzman, II et al.), and once an affinity set contains no items the set is removed from consideration and the next affinity set is considered, and then the next, and so on (Figure 4 of Kurtzman, II et al.).

**18. Regarding dependent claims 17-22,** the claims are the medium containing instructions that correlates to the method of claims 6-11. Thus, the claims are rejected along the same rationale as claims 6-11.

**Regarding dependent claims 27-32,** the claims incorporate substantially similar subject matter as claims 6-11. Thus, the claims are rejected along the same rationale as claims 6-11.

***Response to Arguments***

Art Unit: 2178

19. Applicant's arguments filed 03/02/2004 have been fully considered but they are not persuasive.

Regarding applicant's arguments on pages 9-10, on claims 1, 12, and 23, Kurtzman II et al. discloses a method in which the selection process is normalized by giving all sets of data an equal opportunity during the selection process (column 2, lines 38-47 of Kurtzman II et al.). The examiner feels that Kurtzman II et al show the claimed invention's broad use of the term normalizing the probability, by initially scanning all sets of data equally allowing equal opportunity.

Regarding applicant's arguments on page 11, the arguments are based on the same rationale as the arguments of claims 1, 12, and 23, thus the same rationale is used in considering the arguments to be not persuasive.

### ***Conclusion***

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 2178


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua D Campbell whose telephone number is (703)305-5764. The examiner can normally be reached on M-F (8:00 AM - 4:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on (703)308-5186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDC  
May 4, 2004



**STEPHEN S. HONG**  
**PRIMARY EXAMINER**